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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,259	07/29/2003	Jih-Ru Hwu	BHT-3107-123	5436

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TROXELL LAW OFFICE PLLC
SUITE 1404
5205 LEESBURG PIKE
FALLS CHURCH, VA 22041

EXAMINER

PAK, JOHN D

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/628,259

Applicant(s)

HWU ET AL.

Examiner

JOHN PAK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3-6 and 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claims 1-14 are pending in this application.

Applicant's election of the invention of Group I, claims 2 and 10 (with linking claims 1 and 7-9), in the reply of 3/10/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 3-6 and 11-14 are withdrawn from further consideration as being directed to non-elected subject matter. Claims 1-2 and 7-10 will presently be examined *to the extent that they read on the elected subject matter, i.e. component (B) is an ionic compound.*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by McLean (US 5,958,462).

McLean explicitly discloses a composition and process of preparing a composition, wherein the following components are mixed together:

(A) 0.001 to 4 wt% copper salt such as copper gluconate;

(B) 0.1 to 5 wt% lithium chloride;

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(C) 65-95 wt% magnesium salt such as magnesium sulfate trihydrate; and

(D) 5-35 wt% a carbonate such as sodium bicarbonate.

See claims 10, 11, 13, 16; see also from column 3, line 65 to column 4, line 52¹. The composition is for use in aromatherapy (claim 11).

Antibacterial, antiviral and antifungal composition

Even though McLean does not state that the disclosed composition is antibacterial, antiviral and antifungal, the same property must necessarily be possessed by McLean's composition because it contains the same exact claim-required ingredients at amounts that are readable on the instant claims. See MPEP 2112, 2112.01.

Weight ratio of A:B:C = 1 : 10-50 : 1500-3000

It is a matter of basic math to see that the proportions of A, B and C disclosed by McLean would encompass applicant's claimed ratio of A:B:C. Further, there are clear disclosures by which the ordinary skilled artisan would have readily recognized the specific ratio claimed. The preferred amount of magnesium sulfate trihydrate is about 79 wt% (column 4, line 6). When A = about 0.026 to 0.053 wt% and B = about 0.26 to 1.3 (for when A = 0.026 wt%) or 0.53 to 2.65 wt% (when A = 0.053 wt%), applicant's claimed ratio is met with the preferred amount of magnesium sulfate trihydrate. Similarly, the preferred amount of lithium chloride is about 1 wt% (column 4, line 26). When the preferred amounts of *both* magnesium sulfate trihydrate and lithium chloride

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are used, McLean's component A can be present at about 0.05 wt% to meet applicant's claimed ratio: $0.05 : 1 : 79 = \text{about } 1 : 20 : 1580$.

Claim 7: Formulated as a spray, aerosol and a film

Since the composition is for aromatherapy, formulation with water is clearly disclosed (see e.g., column 5, lines 15-37). The bath water with McLean's components can function as a spray or a film, so it meets the requirements of the claim language.

Claim 8: Various uses, including applying to human beings

Aromatherapy is for human use, so this claim feature is met.

Remaining claim features are plainly met by McLean's explicit disclosure and require no further elaboration. The claims are thereby anticipated.

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machines is (571)273-8300.

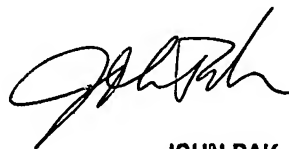
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner John Pak whose telephone number is **(571)272-0620**. The Examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Mr. Gary Kunz, can be reached on **(571)272-0887**.

¹ Column 4, lines 38-40 disclose copper gluconate.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(571) 272-1600**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have a question on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JOHN PAK
PRIMARY EXAMINER
GROUP 1200